

FIRST REGULAR SESSION

# SENATE BILL NO. 277

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOLSMAN.

Read 1st time February 7, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1414S.01I

## AN ACT

To amend chapter 393, RSMo, by adding thereto seven new sections relating to the Missouri energy efficiency performance standard.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 393, RSMo, is amended by adding thereto seven new sections, to be known as sections 393.1080, 393.1083, 393.1086, 393.1089, 393.1092, 393.1095, and 393.1098, to read as follows:

**393.1080. 1. Sections 393.1080 to 393.1098 shall be known as the "Missouri Energy Efficiency Performance Standard".**

**2. As used in sections 393.1080 to 393.1098, the following terms shall mean:**

**(1) "Baseline":**

**(a) For electric energy savings, the average of the total kilowatt hours the electric utility delivered in the preceding two calendar years to customers in this state; or**

**(b) For gas energy savings, the average of the total cubic feet of natural gas delivered by the natural gas utility in the preceding two calendar years to customers in this state; or**

**(c) For peak demand reduction, the average of the annual peak demand of the electric utility in the preceding two calendar years;**

**(2) "Commission", the Missouri public service commission;**

**(3) "Corporation", an electrical or gas corporation as defined in section 386.020;**

**(4) "Total resource cost test", the test defined under subdivision (6) of subsection 2 of section 393.1075;**

**(5) "Utility", an electrical or gas corporation, municipal utility, or rural electric cooperative, unless otherwise specified.**

393.1083. 1. An electrical corporation shall implement programs  
2 that achieve the following incremental savings starting from the  
3 baseline:

4 (1) For 2014, three-tenths of one percent of total annual energy  
5 and one percent of annual peak demand;

6 (2) For 2015, five-tenths of one percent of total annual energy  
7 and one percent of annual peak demand;

8 (3) For 2016, seven-tenths of one percent of total annual energy  
9 and one percent of annual peak demand;

10 (4) For 2017, nine-tenths of one percent of total annual energy  
11 and one percent of annual peak demand;

12 (5) For 2018, one and one-tenth percent of total annual energy  
13 and one percent of annual peak demand;

14 (6) For 2019, one and three-tenths percent of total annual energy  
15 and one percent of annual peak demand;

16 (7) For 2020, one and five-tenths percent of total annual energy  
17 and one percent of annual peak demand;

18 (8) For 2021, one and seven-tenths percent of total annual energy  
19 and one percent of annual peak demand; and

20 (9) For 2022 and subsequent years, unless additional energy  
21 savings and demand savings goals are established by the commission,  
22 one and nine-tenths percent of total annual energy and one percent of  
23 annual peak demand each year.

24 2. Beginning January 1, 2014, a gas corporation shall implement  
25 energy efficiency programs that annually achieve natural gas energy  
26 savings equivalent to at least two-tenths of one percent of the  
27 baseline. The annual savings amount to be achieved shall increase to  
28 five-tenths of one percent of the baseline beginning January 1, 2015, to  
29 one percent beginning January 1, 2017, and then to one and one-half  
30 percent of the baseline beginning January 1, 2020, and each year  
31 thereafter.

32 3. By January 1, 2022, the commission shall decide whether to  
33 maintain or increase the annual savings requirements. The commission  
34 may reduce the requirement for a corporation only if, upon application  
35 by the corporation, the commission determines that the utility cannot  
36 continue to achieve the target due to regulatory, economic or  
37 technological reasons beyond the utility's or the commission's

38 reasonable control.

39 4. If an electrical or gas corporation's incremental energy  
40 savings in any year exceed the applicable performance standard  
41 established in this section, those extra savings may be carried forward  
42 and credited to the next year's standard, subject to the following  
43 provisions:

44 (1) The amount of any savings carried forward shall not exceed  
45 one-third of the next year's standard; and

46 (2) Any savings carried forward shall not be used toward  
47 claiming any utility incentive under section 393.1075 or sections  
48 393.1080 to 393.1098 outside the year in which the savings were  
49 realized, however, any such savings carried forward may be applied in  
50 the consideration of any penalties under section 393.1095.

393.1086. 1. Within nine months of the effective date of sections  
2 393.1080 to 393.1098, the commission shall promulgate rules to  
3 implement sections 393.1080 to 393.1098 and to specify the procedure  
4 for electrical and gas corporations to develop and submit energy  
5 efficiency plans to meet the energy efficiency performance standard. To  
6 the extent applicable, the commission shall follow the provisions of  
7 section 393.1075, except that in the event of a conflict between section  
8 393.1075 and sections 393.1080 to 393.1098, the provisions of sections  
9 393.1080 to 393.1098 shall prevail.

10 2. The commission's rules under this section shall:

11 (1) Require corporations to provide customers, upon request,  
12 with two years' worth of energy consumption data in an accessible  
13 form;

14 (2) Specify procedures and standards for measuring eligible  
15 electricity savings and natural gas savings;

16 (3) Specify procedures and standards for third-party verification,  
17 to be reported to the commission and the utilities, of utility-reported  
18 electricity savings or natural gas savings;

19 (4) Provide for the ability of a corporation to earn a financial  
20 incentive, on an annual basis, for exceeding the energy efficiency  
21 performance standard under section 393.1083;

22 (5) Provide for a statewide stakeholder collaborative to fulfill at  
23 least the following functions:

24 (a) To recommend new programs for inclusion in the utility

25 program plans, and to review program designs in advance of plan  
26 filings;

27 (b) To establish agreed-upon performance metrics for measuring  
28 portfolio and program performance;

29 (c) To review plan progress against metrics and against the  
30 performance targets set out in the rule;

31 (d) To review program budget shifts between programs where  
32 the change exceeds twenty percent of the budget;

33 (e) To explore joint programs where doing so would reduce  
34 program costs and increase savings;

35 (f) To monitor the work being carried out by the independent  
36 evaluators.

37 3. Any rules developed under subdivision (2) of subsection 2 of  
38 this section shall:

39 (1) Require that energy savings estimates for customer facilities  
40 or portions of facilities be adjusted, as appropriate, to account for  
41 changes in weather, level of production, and building area so that only  
42 energy savings attributable to energy efficiency investments are  
43 counted toward the performance standard;

44 (2) Account for the useful life of electricity and natural gas  
45 saving measures;

46 (3) Allow for the use of deemed savings values, where justified,  
47 for specific, commonly-used efficiency measures;

48 (4) Allow for savings from a program to be estimated based on a  
49 statistical sample of participating customers and extrapolated to all  
50 participating customers; and

51 (5) Exclude savings that are not properly attributable to  
52 measures carried out by the entity seeking the credit for such savings,  
53 or a designated agent of the entity, or have already been credited  
54 under sections 393.1080 to 393.1098 to another entity or to the same  
55 entity.

56 4. Any rule or portion of a rule, as that term is defined in section  
57 536.010 that is created under the authority delegated in this section  
58 shall become effective only if it complies with and is subject to all of  
59 the provisions of chapter 536, and, if applicable, section 536.028. This  
60 section and chapter 536 are nonseverable and if any of the powers  
61 vested with the general assembly pursuant to chapter 536, to review, to

62 delay the effective date, or to disapprove and annul a rule are  
63 subsequently held unconstitutional, then the grant of rulemaking  
64 authority and any rule proposed or adopted after August 28, 2013, shall  
65 be invalid and void.

393.1089. 1. Within six months of the effective date of the  
2 regulations promulgated by the commission under sections 393.1080 to  
3 393.1098, and biennially thereafter, an electrical or gas corporation  
4 shall file an energy efficiency plan with the commission. In the absence  
5 of such regulations the commission shall adapt the procedures in the  
6 rules it promulgated under section 393.1075.

7 2. An energy efficiency plan filed with the commission under this  
8 section shall do all of the following:

9 (1) Propose a set of energy efficiency programs and a set of peak  
10 demand reduction programs that include offerings for each customer  
11 class, including low income residential. Training and educational  
12 programs, and emerging technology pilot programs, may count towards  
13 the standards;

14 (2) Specify necessary funding levels for proposed programs, and  
15 ensure that no less than five percent of program funding goes to  
16 evaluation, measurement and verification;

17 (3) Describe how costs will be recovered;

18 (4) Ensure, to the extent feasible, that charges collected from a  
19 particular customer rate class are spent on programs for that rate  
20 class;

21 (5) Demonstrate that the proposed programs and funding are  
22 sufficient to ensure the achievement of applicable energy efficiency  
23 performance standards under section 393.1083, and how they compare  
24 to the goal of achieving all cost-effective demand-side savings in  
25 subsection 4 of section 393.1075;

26 (6) Demonstrate that the corporation's energy efficiency and  
27 demand reduction portfolios will be cost-effective, using the total  
28 resource cost test;

29 (7) Provide for the practical and effective administration of the  
30 proposed programs. The commission shall allow corporations  
31 flexibility in designing their programs and administrative approaches.  
32 A corporation's programs, or any part thereof, may be administered, at  
33 the corporation's option, by the corporation alone or jointly with other

34 utilities, by a state agency, or by an appropriate, experienced  
35 organization selected after a competitive bid process. The commission  
36 may allow for the coordination of programs among consenting utilities  
37 where feasible, if doing so would help to maximize energy savings on  
38 a statewide basis. However, money spent by a utility to comply with  
39 sections 393.1080 to 393.1098 shall only be used to fund programs that  
40 provide services in that utility's service territory; and

41 (8) Include a process for independent third-party measurement  
42 and verification of incremental energy savings from each program. All  
43 such evaluations shall be subject to public review and commission  
44 oversight.

45 3. An energy efficiency plan may provide for the corporation to  
46 facilitate third party loans to customers to finance energy efficiency  
47 and demand reduction measures.

48 4. Within one hundred twenty days of receiving an energy  
49 efficiency plan from a corporation and after an opportunity for public  
50 comment, the commission shall approve, approve with changes  
51 consented to by the corporation, or reject the plan.

52 (1) If the commission rejects the plan, the commission shall state  
53 the reasons for its action.

54 (2) Within thirty days after the commission rejects a plan, the  
55 corporation shall submit a revised plan that addresses the reasons for  
56 rejection cited by the commission.

57 (3) Within thirty days after receiving a revised plan and after an  
58 opportunity for public comment, the commission shall approve, approve  
59 with changes consented to by the corporation, or reject the revised  
60 plan. If the commission rejects the revised plan, the commission shall  
61 state the reasons for the rejection.

62 (4) Any delay caused by the failure of a corporation to file an  
63 acceptable revised plan shall not be used as a reason to avoid penalties  
64 under section 393.1095.

65 (5) The procedure for rejected plans under this subsection shall  
66 be repeated until a revised plan is approved or approved with changes  
67 consented to by the corporation. The commission's action under this  
68 section does not affect the applicability of the requirements of section  
69 393.1083 or 393.1095.

393.1092. 1. By a date determined by the commission, each

2 corporation shall submit to the commission an annual report that  
3 provides information relating to the actions taken by the corporation  
4 to comply with the energy efficiency performance standards under  
5 section 393.1083. By that same date, a municipally-owned utility or a  
6 cooperative utility shall submit a similar report to its governing body.

7 2. An annual report under subsection 1 of this section shall  
8 include all of the following information:

9 (1) The estimated annual electricity or natural gas savings  
10 achieved by the corporation through energy efficiency programs  
11 provided during the reporting period;

12 (2) An estimate of the annual and life-cycle carbon dioxide  
13 emissions avoided by the energy efficiency programs implemented  
14 during the reporting period;

15 (3) The estimated incremental peak reduction achieved through  
16 peak demand reduction programs during the reporting period;

17 (4) Expenditures made on energy efficiency and peak demand  
18 reduction programs during the reporting period and anticipated future  
19 expenditures to comply with sections 393.1080 to 393.1098;

20 (5) The cost-effectiveness of implemented portfolios; and

21 (6) Any other information that the commission determines  
22 necessary.

23 3. Five years after the effective date of sections 393.1080 to  
24 393.1098, and every five years thereafter, the commission shall produce  
25 a report that includes all of the following information:

26 (1) A summary of data collected under sections 393.1080 to  
27 393.1098;

28 (2) The status of energy efficiency in this state;

29 (3) For the total portfolio of energy efficiency programs, a  
30 comparison of the cost of the energy efficiency versus the cost of  
31 electricity from a new conventional coal-fired electric generating  
32 facility;

33 (4) An evaluation of whether the Missouri energy efficiency  
34 performance standard has been cost-effective;

35 (5) A description of the impact of the Missouri energy efficiency  
36 performance standard on employment in this state;

37 (6) Any recommendations the commission may have concerning  
38 amendments to sections 393.1080 to 393.1098, including changes in the

39 performance standard percentage minimums.

2 393.1095. If a gas or electrical corporation fails to demonstrate  
3 compliance with an applicable performance standard under section  
4 393.1083, the commission shall assess a civil penalty for each such  
5 failure in an amount equal to:

6 (1) One hundred dollars per megawatt-hour of electricity savings  
7 that the electrical corporation failed to achieve; or

8 (2) Ten dollars per million Btu of natural gas savings that the gas  
9 corporation failed to achieve. The commission may annually adjust the  
10 amounts based on the rate of inflation according to the consumer price  
11 index. The amounts assessed shall be paid to the department of natural  
resources and used solely for its energy efficiency programs.

393.1098. Each distribution cooperative utility and municipal  
2 utility shall be subject to section 393.1083 and subsections 1 and 2 of  
3 section 393.1092. A generation and transmission cooperative that  
4 provides energy services to distribution cooperatives may act on behalf  
5 of the cooperatives it serves. A joint municipal utility commission may  
6 act on behalf of its contracting municipalities. Cooperative and  
7 municipal utilities may, jointly or severally, contract with third-party  
8 administrators in fulfilling the terms of sections 393.1080 to 393.1098.

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